

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of )

Prosper Marketplace, Inc. )  
111 Sutter Street, 22<sup>nd</sup> Floor, )  
San Francisco, California 94104 )

Respondent. )

ADMINISTRATIVE CONSENT ORDER

WHEREAS, the Office of Financial and Insurance Regulation ("OFIR") conducted an investigation of Prosper Marketplace, Inc. ("Prosper") and determined that Prosper has offered and sold securities as defined in Section 401 Uniform Securities Act of 1964, 1964 PA 265, as amended, (the "Uniform Securities Act"), MCL 451.801; and

WHEREAS, a number of state regulators coordinated investigations into Prosper's activities in connection with unregistered securities offered and sold between 2006 and October 2008; and

WHEREAS, Prosper has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and halting further offers and sales until the securities are appropriately registered; and

WHEREAS, Prosper, as part of this settlement, agrees to appropriately register its securities with OFIR before making further offers or soliciting sales, and to make certain payments; and

WHEREAS, Prosper neither admits nor denies the Findings of Fact and Conclusions of Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered securities through this Administrative Consent Order (the "Order") in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, Prosper, as evidenced by the authorized signature on the consent to the Order

1 below, admits the jurisdiction of OFIR, voluntarily consents to the entry of this Order and elects to  
2 permanently waive any right to a hearing and appeal under the Administrative Procedures Act of  
3 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*, ("APA"), and the Uniform Securities Act  
4 with respect to this Order;

5 NOW, THEREFORE, the Commissioner of OFIR, as administrator of the Uniform  
6 Securities Act, hereby enters this Order:

### 7 8 **FINDINGS OF FACT**

#### 9 **Part 1: Respondent Licensing/Registration History**

10 1. Prosper is a Delaware corporation (Delaware Division of Corporations #3943799) that was  
11 incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22<sup>nd</sup>  
12 Floor, San Francisco, California 94104. Prosper registered as a foreign business corporation in  
13 Michigan on September 16, 2005 (Michigan Bureau of Commercial Services Corporate Id. No.  
14 655-575). Since February 2006 Prosper has held itself out, through its Internet website,  
15 www.prosper.com, as an online marketplace for "person to person" lending.

16 2. Prosper has been licensed as a California finance lender (license #605-3227) since  
17 December 19, 2005 and as a consumer finance company by Michigan since December 7, 2005  
18 (Regulatory Loan license, RL-0012605). Its consumer finance license allows Prosper, pursuant to  
19 Consumer Financial Services Act, 1988 PA 161, as amended, MCL 487.2051 *et seq.*, and the  
20 Regulatory Loan Act, 1939 PA 21, MCL 493.1 *et seq.*, as amended, to make loans to consumers  
21 within certain limits. A consumer finance license does not authorize a licensee to sell securities to  
22 Michigan residents.

23 3. Prosper submitted an application to register securities in Michigan on November 8, 2007.  
24 As of the date of this order, Prosper does not yet have an active securities registration in Michigan.  
25  
26

**Part 2: Prosper Product Prior to October 16, 2008**

4. Prosper lending platform functioned like a double-blind auction, connecting individuals who wish to borrow money, or "borrowers," with individuals or institutions who wish to commit to purchase loans extended to borrowers, referred to on the platform as "lenders." Lenders and borrowers registered on the website and created Prosper identities. They were prohibited from disclosing their actual identities anywhere on the Prosper website.

5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between \$1,000 and \$25,000 by posting "listings" on the platform indicating the amount they wanted to borrow and the maximum interest rate they were willing to pay. Prosper assigned borrowers a credit grade based on a commercial credit score obtained from a credit bureau, but Prosper did not verify personal information, such as employment and income.

6. Potential lenders bid on funding all or portions of loans at specified interest rates, which were typically higher than rates available from depository accounts at financial institutions. Each loan was usually funded with bids by multiple lenders. After an auction closed and a loan was fully bid upon, the borrower received the requested loan with the interest rate set by Prosper and determined by the auction bidding at the lowest rate acceptable to all winning bidders.

7. Individual lenders did not lend money directly to the borrower; rather, the borrower received a loan from a bank with which Prosper has contracted. (Prior to April of 2008, loans were made directly by Prosper.) The interests in that loan were then sold and assigned through Prosper to the lenders, with each lender receiving an individual non-recourse promissory note.

8. Since the inception of its platform in January 2006, Prosper has initiated approximately \$174 million in loans nationwide. Prosper collected an origination fee from each borrower of one to three percent of loan proceeds, and collected servicing fees from each lender from loan payments at an annual rate of one percent of the outstanding principal balance of the notes.

9. Prosper administered the collection of loan payments from the borrower and the distribution of such payments to the lenders. Prosper also initiated collection of past due loans from borrowers

1 and assigned delinquent loan accounts to collection agencies. Lenders and borrowers were  
2 prohibited from transacting directly and were unable to learn each others' true identities.

3 10. Prosper voluntarily suspended all offers and sales of securities on October 16, 2008.

4 11. Forty Thousand Four Hundred Ninety Six Michigan residents have financed Prosper loans  
5 totaling more than \$3,664,786.79.

6  
7 **Part 3: Prosper's Omissions in Connection with Sales to Investors**

8 12. Prosper provided information to lenders concerning the issues noted below, although it  
9 did not provide the information in the manner typically required of a securities registrant regarding:  
10 details of the company's business model; biographical information about the background and  
11 experience of Prosper's management; certain risk factors in connection with the purchase of a  
12 Prosper facilitated note, including the fact that the notes were speculative investments; significant  
13 financial risks that investors may be subjected to when investing in the Prosper notes that could  
14 result in a complete loss of their investment, such as the fact that borrowers may not fulfill their  
15 obligations to make payments for reasons of death or incapacity, bankruptcy, or inability to pay;  
16 information concerning Prosper's status as a development stage company with a limited operating  
17 history; and the possibility that Prosper could cease operations at any time due to the failure to  
18 raise additional capital, because of a lack of profitability, or because of regulatory concerns.

19  
20 12. The Prosper website, the company's exclusive mode of dissemination of information to  
21 prospective investors, did not contain financial statements for Prosper, did not disclose that the  
22 notes were not registered with the OFIR, and that Prosper might have significant contingent  
23 liability for the offer and sale of unregistered securities.  
24  
25  
26

## CONCLUSIONS OF LAW

1  
2 1. The "notes" sold by Prosper to Michigan residents are securities, as defined by Section  
3 401(z) of the Uniform Securities Act, MCL 451.801(z).

4 2. Prosper sold securities that were not registered with OFIR in violation Section 301 of the  
5 Uniform Securities Act, MCL 451.701.

6 3. In connection with the offer or sale of a security to Michigan residents, Prosper either  
7 failed to include information or failed to describe in the manner typically required of a securities  
8 registrant certain business or loan information including investment risk factors, that would have  
9 aided investors, or prospective investors in making an objective decision on whether to invest in  
10 the Prosper notes in violation Section 303 of the Uniform Securities Act, MCL 451.703.  
11  
12

## ORDER

### IT IS HEREBY ORDERED:

13  
14  
15 1. Prosper will CEASE AND DESIST from offering and/or selling securities to persons in or  
16 from Michigan in violation of the Uniform Securities Act and will hereafter comply with the Uniform  
17 Securities Act.

18 2. Prosper shall pay the sum of \$20,461.00 to the State of Michigan, allocated in the following  
19 manner: \$18,414.90 to the State of Michigan General Fund, and \$2,046.10 to the Michigan  
20 Investor Protection Trust Fund.  
21

22 3. In the event another state securities regulator determines not to accept Prosper's state  
23 settlement offer, the total amount of the State of Michigan payment shall not be affected, and shall  
24 remain at \$20,461.00.

25 4. This Order concludes the investigation by OFIR and any other action that OFIR could  
26 commence under the Uniform Securities Act on behalf of the State of Michigan as it relates to

1 Prosper, up to and including any activity through November 24, 2008; provided however, that  
2 excluded from and not covered by paragraph 1 in this section are any claims by the OFIR arising  
3 from or relating to the "Order" provisions contained herein.

4 5. This Order is entered into solely for the purpose of resolving the referenced multistate  
5 investigation, and is not intended to be used for any other purpose, and its findings and conclusions  
6 shall not constitute admissions on the part of Prosper for any purpose.

7 6. If payment is not made by Prosper, or if Prosper defaults in any of its obligations set forth  
8 in this Order, OFIR may vacate this Order, at its sole discretion, upon 10 days notice to Prosper  
9 and without opportunity for administrative hearing, and commence separate action.

10 7. For any person or entity not a party to this Order, this Order does not limit or create any  
11 private rights or remedies against Prosper, does not limit or create liability of Prosper, or limit or  
12 create defenses of Prosper to any claims.

13 8. Nothing herein shall preclude the State of Michigan, its departments, agencies, boards,  
14 commissions, authorities, political subdivisions and corporations, other than OFIR and only to the  
15 extent set forth in paragraph 1 in this section, (collectively, "State Entities") and the officers, agents or  
16 employees of State Entities from asserting any claims, causes of action, or applications for  
17 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief  
18 against Prosper in connection with unregistered securities sales.

19 9. This Order and any dispute related thereto shall be construed and enforced in accordance  
20 with, and governed by, the laws of the State of Michigan without regard to any choice of law  
21 principles.  
22  
23  
24  
25  
26

1 10. This Order shall be binding upon Prosper and its successors and assigns as well as to  
2 successors and assigns of relevant affiliates with respect to all conduct subject to the provisions  
3 above and all future obligations, responsibilities, undertakings, commitments, limitations,  
4 restrictions, events, and conditions.  
5

6  
7 Dated this 25<sup>th</sup> day of June, 2009.

8  
9 BY ORDER OF THE COMMISSIONER OF THE OFFICE  
10 OF FINANCIAL AND INSURANCE REGULATION  
11

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  

---

Kenneth Ross, Commissioner  
Office of Financial and Insurance Regulation

**CORPORATE CONSENT TO ENTRY OF ORDER FOR  
PROSPER MARKETPLACE, INC.**

I, Christian A. Larsen, state that I am an officer of Prosper Marketplace, Inc. and I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that Prosper Marketplace, Inc. voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter; that Prosper Marketplace, Inc. understands that OFIR reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Uniform Securities Act by Prosper Marketplace Inc.; and that Prosper Marketplace, Inc. will fully comply with the terms and conditions stated herein. Prosper Marketplace, Inc. agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary settlement that shall pay pursuant to this Order.

Prosper Marketplace Inc. understands that this order is a public record document.

Prosper Marketplace Inc. has been represented by counsel of its choosing in connection with the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.

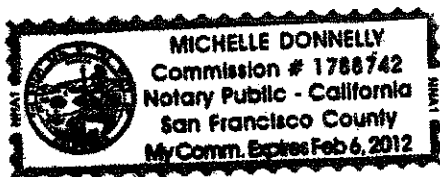
Dated this 3rd day of June, 2009.

Prosper Marketplace, Inc.

By: \_\_\_\_\_

Title: President and CEO

SUBSCRIBED AND SWORN TO before me this 3rd day of June, 2009.



Michelle Donnelly  
Notary Public



My Commission expires: February 6, 2012

Order Approved as to Form:

Randall J. Fons, Partner  
Morrison & Foerster LLP

Date